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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte ANANT NAMBIAR, MARC DEL BENE,
JARED H. LEVIN, and GEETHA PANCHAPAKESAN

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Appeal 2015-002789[1]
Application 11/848,285
Technology Center 3600

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Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
MICHAEL W. KIM, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 4, 6, 11–14, 17,
19, and 29–34. We have jurisdiction to review the case under 35 U.S.C.
§§ 134 and 6.

The invention relates generally to payment cards. Spec. 1, ll. 5–6.

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[1] The Appellants identify MasterCard International Incorporated as the real
party in interest. Appeal Br. 3.

Claim 1 is illustrative:

1. A method comprising:

    providing a system, wherein said system comprises distinct software modules, each of said distinct software modules being embodied on at least one tangible computer-readable recordable storage medium, and wherein said distinct software modules comprise a consumer-facing front end module and an account personalization platform module;

    obtaining from a first bank, by said system, access to data describing a first set of parameters associated with a first payment card account;

    detecting, by said system, a first change in a spending habit associated with said first payment card account, said first change occurring since establishment of said first set of parameters associated with said first payment card account;

    facilitating, by said system, presentation of a first menu of updated parameter choices, said presentation of said first menu being responsive to a detection of said first change in said spending habit associated with said first payment card account;

    obtaining, by said system, a first selection from said first menu, said first selection from said first menu comprising data describing a second set of parameters associated with said first payment card account, said second set of parameters associated with said first payment card account being different than said first set of parameters associated with said first payment card account; and

    facilitating, by said system, updating said first payment card account by said first bank to operate according to said second set of parameters associated with said first payment card account, wherein facilitating comprises communicating said second set of parameters to said first bank.

Claims 1, 4, 6, 11–14, 17, 19, and 29–34 are rejected under 35 U.S.C. § 101 as reciting ineligible subject matter in the form of an abstract idea.

Claims 17, 30, and 33 are rejected under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4, 6, 11–13, 17, 19, and 29–34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Blagg (US 2002/0198806 A1, pub. Dec. 26, 2002), Warren (US 2003/0101131 A1, pub. May 29, 2003), and Anderson (US 2005/0279824 A1, pub. Dec. 22, 2005).

Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Blagg, Warren, Anderson, and Walker (US 5,970,478, iss. Oct. 19, 1999).

We AFFIRM.

ANALYSIS

Rejection Under 35 U.S.C. § 101

Appellants argue claims 1, 4, 6, 11–14, 17, 19, 30, and 31 together as a group, so we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites a method involving providing software, communicating data to and from a bank, presenting a menu from which a user may make a selection, and "detecting, by said system, a first change in a spending habit." The communications of data and facilitating use of a menu to present data and receive a selection are mere input-output operations insufficient to convert a claim into patentable subject matter, because these are basic operations of a generic computer to communicate data, present data, and receive a selection.

We are not persuaded by Appellants' argument that claim 1 presents "meaningful limitations" that go beyond a mere abstract idea, such as having

"software modules," a "particular machine," and obtaining a selection from a menu. Appeal Br. 10–11; *see also* Reply Br. 13–16. The bulk of claim 1 recites software modules used by "a system," communicating data, and "facilitating" presenting and receiving a selection from a menu, which are all attributes of a general purpose computer.

The sole remaining limitation, "detecting, by said system, a first change in a spending habit," must be examined more carefully. In support of this limitation, Appellants cite Figure 2, element 206, and page 11, lines 16–27 of Appellants' Specification. Appeal Br. 4. Element 206, shown below, suggests the detecting is a simple data test with two possible outcomes:
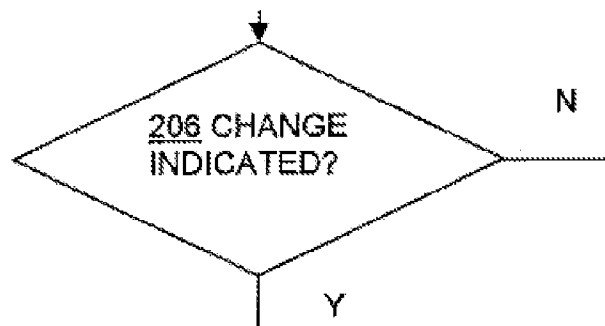
Element 206 of Appellants' Figure 2, showing a yes/no
decision block in a flow diagram.

The cited portion of the Specification describes "obtaining indications of a first change in a life situation of the holder, the first change occurring since establishment of the first set of parameters," and "we find out that the person got married, had children, retired, and so on." Spec. 11, ll. 16–20. The detecting appears to be a simple check of a yes or no situation, such as whether data supplied by a consumer (*see* Spec. 13, ll. 16–22) indicates a person is married or not. This is also a simple data operation capable of being performed by any general purpose computer.

The claimed method, thus, does no more than use a general purpose computer to perform basic data communication, checking, "facilitating" presentation, and selection activities, in support of using data to decide if stored data should be modified. Because managing a financial account's parameters of operation is a fundamental economic practice employed by financial service providers over a long period of time, and the method does no more than perform basic mental functions with the use of a general purpose computer, the claim is an ineligible abstract idea. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].").

Appellants argue the Examiner has not explained why the claim is merely a fundamental economic practice. Reply Br. 11. We are not persuaded by Appellants' argument, because the claim merely recites a way to alter parameters associated with the operation of a financial account, which altering is a long-used, normal part of managing a financial account. Each account, which is itself an abstract concept, is managed in commerce by monitoring and controlling parameters of the account, such as creditworthiness, ability to pay, and basic financial situation of the account holder, including payment history, balance, and duration of the account. Managing a financial account is a fundamental economic practice, and that managing is done using data about the account, and making choices based on that data, as in the claimed method.

We are also unpersuaded by Appellants' assertion that certain limitations in the claims tie the claims to a "new and useful end." Reply

Br. 12. Claim 1, however, merely permits management of a financial account's parameters and operation, which is not a new endeavor.

Claim 29, which depends from claim 1, introduces "said consumer-facing front end module implemented on said at least one hardware processor." We are not persuaded by Appellants' argument that the claim's mention of a general-purpose "hardware processor" ensures the claim recites patentable subject matter (Appeal Br. 11), for the same reasons given above.

Appellants argue that dependent claims 32–34, each of which recites language substantially identical to *using a transaction history of said first payment card account in a payment card network*, leverage the payment card network so that "this [transaction history] information can be used to offer compelling card features and benefits to the consumers." Reply Br. 12. The argued offering, however, is not recited in the claims, and this, thus, does not transform the abstract idea of using data in managing a financial account into eligible subject matter.

For these reasons, we affirm the rejection of claims 1, 4, 6, 11–14, 17, 19, and 29–34 under 35 U.S.C. § 101.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Independent claim 17 recites a system with six "means for" limitations, including "means for detecting a first change in a spending habit associated with said first payment card account, said first change occurring since establishment of said first set of parameters." The Examiner rejects the claims as indefinite on the basis of being "unable to locate sufficient corresponding structure to perform the claimed functions" in Appellants' Specification. Final Act. 3. We agree with the Examiner.

Appellants argue the structure is present in the described processor and memory, and, for claims 32–34, the recited terminals and network. Appeal Br. 12; *see also* Reply Br. 17. We are unpersuaded by Appellants' argument, for the following reasons.

The corresponding structure of a means-plus-function limitation must be more than simply a general-purpose computer or microprocessor to avoid pure functional claiming. *Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008). However, where the disclosed structure is a computer programmed to implement an algorithm, "the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm" *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999), which may be expressed in any understandable terms, including as a mathematical formula, in prose (*see In re Freeman*, 573 F.2d 1237, 1245 (CCPA 1978)), as a flow chart, or in any other manner that provides sufficient structure. *See Finisar Corp. v. The Direct TV Group*, 523 F.3d 1323, 1340 (Fed. Cir. 2008).

The cited generic computer hardware components are, thus, insufficient to understand the meaning of the means-for limitations. Appellants also cite Figure 2, element 206, and page 11, lines 16–27 of the Specification. Appeal Br. 4. As noted above, Figure 2 is a portion of a flowchart, but because it merely represents a yes/no decision, with no specific inputs about spending, and, thus, does not give meaning to the claimed determining of a change in spending habit. In addition, the cited portions of the Specification concern life situations, not spending habits. *See*

Spec. 11, ll. 16–20 ("we find out that the person got married, had children, retired, and so on.").

We conclude Appellants have not disclosed an algorithm for determining a change in a spending habit, as claimed. For this reason, we affirm the rejection of independent claim 17, as well as dependent claims 30 and 33, under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 1, 4, 6, 11–13, 17, 19, and 29–31 Under 35 U.S.C. § 103(a)

Appellants argue independent claims 1, 17, and 19 together as a group (Appeal Br. 14). We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded by Appellants' argument that in Blagg, there is no communication between a bank and "third party," such that Blaggs' "third party cannot perform the claimed steps, and in particular 'obtaining from a first bank, by said system, access to data.'" Appeal Br. 14–16; *see also* Reply Br. 18–21.

Claim 1 recites "obtaining from a first bank" data about an account. The claim does not recite language that requires that the entity obtaining the data not be the bank itself. Blagg discloses it "provides systems and methods for providing access to usage parameters associated with financial transaction accounts." Blagg para. 7. Blagg also discloses "paths 1322 of communication between account holder 1304 and usage parameters associated with an account include a communication network 1318 that provides access to an issuer 1306 and/or a third party 1308." Blagg para. 120 (emphasis omitted). The ordinary artisan would recognize that the

communications provided in Blagg permit obtaining data about account parameters from the issuing bank, thus, meeting the claim language concerning obtaining data from a bank. Although not required by the claim, Blagg also discloses communications with an issuing bank by an entity operating a payment card network, based on Blagg's disclosure of "card processing and service provider 100" (Blagg para. 48), which additionally addresses Appellants' arguments concerning third parties.

We are also unpersuaded by Appellants' argument that there is no system "disposed between the client and the issuer configured to perform the claimed steps, much less communicate parameters selected by a client to a bank." Appeal Br. 17; *see also* Reply Br. 22. The argument fails because claim 1 does not require the claimed system to be separate from a bank, such as "between" a bank and a client, and the claimed system does not limit the presentation to and selection of data in a menu to a user who is a client, because under our construction of claim 1, someone at the bank could be the user of the menu and selection program.

We are not persuaded by Appellants' argument that "<u>Anderson's</u> mere reference to 'a cardmember's 100 spending habits' provides no connection between the spending habits and any process disclosed in the reference, much less a detection of a change in the spending habit, essentially as claimed." [2] Appeal Br. 16; *see also* Reply Br. 21–22. Anderson discloses a system "configured to compile limits reports containing analysis of spending patterns and, when appropriate, recommending changes to spending limits based on the frequency and nature of one or more declines." Anderson

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[2] Appellants apparently are referencing language in paragraph 71 of Anderson, though the Examiner did not rely on this paragraph.

para. 21. We find that Anderson's "analysis of spending patterns" meets the claim language of "detecting, by said system, a first change in a spending habit associated with said first payment card account."

For these reasons, we sustain the rejection of claims 1, 17, and 19. We also sustain the rejection of dependent claims 4, 6, 11–13, and 29–31, which were not argued separately.

Rejection of Claims 32–34 Under 35 U.S.C. § 103(a)

Each of dependent claims 32–34 recite:

> wherein said first change in said spending habit is detected based on a transaction history of said first payment card account in a payment card network, wherein said payment card network includes said system, said payment card network connecting a plurality of banks, including said first bank, to a plurality of terminals.

We are not persuaded by Appellants' arguments that the combination of Blagg, Warren, and Anderson does not disclose a "payment card network." Appeal Br. 18; *see also* Reply Br. 23. Blagg discloses "[c]ard processing and service provider 100 supports issuers 102a, 102b . . . 102c by authorizing and processing transactions, as well as providing support for creating new accounts, modifying accounts, controlling communications to account holders 120 and/or implementing and facilitating reward programs." Blagg para. 48 (emphasis omitted). The ordinary artisan would recognize Blagg's "card processing and service provider 100" is a payment card network.

We are also not persuaded by Appellants' argument that Anderson does not detect spending habits using transaction history in a payment card network. Appeal Br. 18–19; *see also* Reply Br. 23–24. Anderson discloses

generating reports that reveal "cardmember spending patterns and provide analysis regarding client-imposed spending limits." Anderson para. 20. We find the ordinary artisan would recognize that Anderson is using a transaction history of a credit card account in a payment card network, at least in part because this is about spending by customers of American Express Travel Related Services, the assignee of Anderson.

For these reasons, we sustain the rejection of claims 32–34 under 35 U.S.C. § 103(a).

Rejection of Claim 14 Under 35 U.S.C. § 103(a)

Appellants do not argue claim 14 separately (*see* Appeal Br. 19). We affirm the rejection of claim 14 for the same reasons as we advanced above for claim 1.

DECISION

We affirm the rejection of claims 1, 4, 6, 11–14, 17, 19, and 29–34 under 35 U.S.C. § 101 as reciting ineligible subject matter.

We affirm the rejection of claims 17, 30, and 33 under 35 U.S.C. §112, second paragraph, as indefinite.

We affirm the rejections of claims 1, 4, 6, 11–14, 17, 19, and 29–34 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED